IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 39 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

AMBALAL SARABHAI & SARLADEVI SARABHAI D TRUST NO.2

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Appearance:

1. INCOME TAX REFERENCE No. 39 of 1992
MR MANISH R BHATT for Petitioner No. 1
MR BD KARIA for the Respondent 1

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CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 03/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

In view of the order passed by the Hon'ble Supreme Court in Civil Appeal No. 3574 of 1989 dated 22.8.1989 and 26.9.89, at the instance of the revenue, the following questions have been referred to this court for its opinion under the provisions of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), arising out of an order dated 18.10.1985 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' in ITA No. 1648/Ahd/1983 for the Assessment Year 1978-79.

"1. Whether the character of the discretionary trust could e changed by resolution passed by the trustees?

2. Whether the Courts below are justified in law in holding that the Income-tax Officer was not justified in applying the rate of 65% under sec. 164 of the Income-tax Act, 1961?"

2. Senior Standing Counsel Shri M.R. Bhatt has appeared for the applicant revenue, whereas learned advocate Shri B.D. Karia has appeared for the respondent assessee.

3. The learned advocates have submitted that the facts involved in this reference are similar to those involved in I.T.R. No. 100/91. Looking to the fact that the said reference has been disposed of in favour of the revenue and against the assessee, and looking to the law laid down by this court in the case of CIT v. Ambalal Sarabhai D. Trust No. 5, 231 ITR 540, we answer both the questions in the negative i.e. against the assessee and in favour of the revenue.

The reference stands disposed of accordingly with no order as to costs.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)